

ESTTA Tracking number: **ESTTA511954**Filing date: **12/19/2012**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Deltone Electric Inc.		
Entity	Corporation	Citizenship	Louisiana
Address	9623 Hwy. 23 South Belle Chase, LA 70037 UNITED STATES		

Attorney information	Jason P. Mueller Adams and Reese, LLP 701 Poydras Street, Suite 4500 new orleans, LA 70139 UNITED STATES jason.mueller@arlaw.com, tracey.langston@arlaw.com Phone:504-585-0490
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Registration Subject to Cancellation

Registration No	4021811	Registration date	09/06/2011
Registrant	Milestone Electric, Inc. 4920 Grisham Road Rowlett, TX 75088 UNITED STATES		

Goods/Services Subject to Cancellation

Class 037. First Use: 2006/01/01 First Use In Commerce: 2006/01/01 All goods and services in the class are cancelled, namely: Electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; electrician services, namely, residential and commercial electrical repairs and installation of light fixtures; electrical contractor services

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
The mark is merely descriptive	Trademark Act section 2(e)(1)
Other	Nonuse

Attachments	Petition for Cancellation.pdf (7 pages)(320202 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jason P. Mueller/
Name	Jason P. Mueller
Date	12/19/2012

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In the matter of: Trademark Registration No. 4,021,811

Date of Registration: September 6, 2011

For the mark: WE'LL FIX IT IN A FLASH

Deltone Electric Inc.

(Petitioner)

v.

Milestone Electric Inc.

(Respondent)

Cancellation No. _____

PETITION FOR CANCELLATION

Petitioner, Deltone Electric Inc., believes that it is and will be damaged by the continued registration of the mark WE'LL FIX IT IN A FLASH (the "Mark") for "electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; electrician services, namely, residential and commercial electrical repairs and installation of light fixtures; electrical contractor services" (the "Services") in Registration No. 4,021,811 (the "Registration") and hereby petitions to cancel the same. As grounds for its petition, Petitioner alleges as follows:

1. Petitioner is a corporation, organized and existing under the laws of the state of Louisiana, with its principal place of business at 9623 Hwy. 23 South, Belle Chase, Louisiana 70037.

2. Petitioner is and has been engaged in the business of supplying electric, heating and air conditioning supplies and services and, in connection therewith, has used the slogan WE'LL FIX IT IN A FLASH since at least as early as 2009.

3. Upon information and belief, Respondent, Milestone Electric Inc., is a Texas corporation with its principal place of business at 4920 Grisham Road, Rowlett, Texas 75088.

4. Upon information and belief, Respondent's services are rendered only within the geographic territory of the Dallas, Texas and Fort Worth, Texas Metroplex. *See Exhibit A.* Upon information and belief, Respondent does not render the Services outside the State of Texas. *See Exhibit A.*

5. On October 25, 2010, Respondent filed Application Serial No. 85/160,325 to register the mark WE'LL FIX IT IN A FLASH on the Principal Register for services identified as "electrical repairs, maintenance, and installation of electrical wiring, outlets, light fixtures, and electrical panels; electrician services, namely, residential and commercial electrical repairs and installation of light fixtures; electrical contractor services," on the basis of Respondent's alleged *bona fide* use of the mark in commerce since at least as early as January 1, 2006. The Patent and Trademark Office ("USPTO") issued United States Trademark Registration No. 4,021,811 on September 6, 2011.

FIRST CLAIM FOR RELIEF
(Merely Descriptive)

6. Petitioner repeats and realleges the allegations in preceding paragraphs 1-5 as if fully set forth herein.

7. As of the issue date of the Registration, the Mark was merely descriptive of the services identified in the Registration and had not acquired distinctiveness. Alternatively, as of the date of this Petition, the Mark is merely descriptive of the services identified in the Registration, and the Mark has not yet acquired distinctiveness.

Accordingly, Respondent is not entitled to maintain registration of the Mark under §§ 2(e) and 14 of the United States Trademark Act, 15, U.S.C. §§ 1052(e)(1) and 1064.

8. Petitioner is being and will be damaged by the continued registration of the Mark, because such registration gives Respondent certain statutory rights, including *prima facie* evidence of its ownership of, and its exclusive right to use the alleged mark, all to the detriment of Petitioner.

SECOND CLAIM FOR RELIEF
(Mark Not In Use At Time Application Was Filed)

9. Petitioner repeats and re-alleges the allegations in preceding paragraphs 1-5 as if fully set forth herein.

10. On information and belief, Respondent had not yet made use of the Mark in commerce at the time Respondent filed the underlying Application Serial No. 85/160,325, which resulted in the Registration. Thus, Respondent is not entitled to registration of the Mark shown in the Registration under §§ 1 and 14 of the United States Trademark Act, 15 U.S.C. §§ 1051 and 1064.

11. Petitioner is being and will be damaged by the continued registration of the Mark, because such registration gives Respondent certain statutory rights, including *prima facie* evidence of its ownership of, and its exclusive right to use, the Mark, to the detriment of Petitioner.

THIRD CLAIM FOR RELIEF
(Fraud)

12. Petitioner repeats and realleges the allegations in preceding paragraphs 1-5 as if fully set forth herein.

13. On information and belief, Respondent's Registration No. 4,021,811 was fraudulently obtained. In the application filed by Respondent on October 25, 2010, under notice of 18 USC 1001, the applicant stated that "the mark was ... first used in commerce at least as early as 01/01/2006, and is now in use in such commerce" in connection with the services identified in the Registration. Said statement was false, because the Respondent was not using the Mark in commerce in connection with the identified services and Respondent had never used the Mark in commerce in connection with the identified services. Said statement is material, because it is a requirement to obtain a federal trademark registration under § 1 of the United States Trademark Act, 15 U.S.C. § 1051. Said statement was made by an authorized agent of Respondent with the knowledge and belief that said statement was false. Said statement was made with the intent to induce authorized agents of the Patent and Trademark Office to grant registration of the Mark, and the Patent and Trademark Office, reasonably relying upon the truth of said false statement, did in fact grant Registration No. 4,021,811 to Respondent. Thus, Respondent is not entitled to registration of the Mark shown in the Registration under § 14 of the United States Trademark Act, 15 U.S.C. § 1064.

14. Petitioner is being and will be damaged by the continued registration of the Mark, because such registration gives Respondent certain statutory rights, including *prima facie* evidence of its ownership of, and its exclusive right to use, the Mark, to the detriment of Petitioner.

WHEREFORE, Petitioner prays for judgment granting its petition and cancelling
Registration No. 4,021,811.

Respectfully submitted

ADAMS AND REESE LLP

A handwritten signature in black ink, appearing to be 'J. Mueller', written over a horizontal line.

Date: December 19, 2012

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Henry J. Fasthoff
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EXHIBIT A

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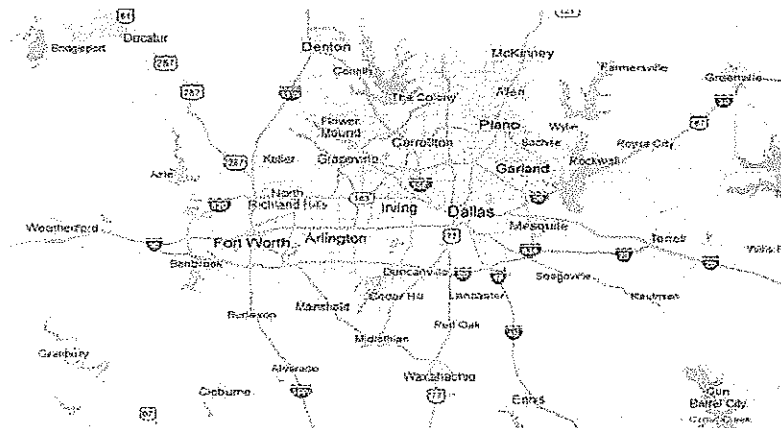
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I hereby certify that a true and complete copy of the foregoing Petition for Cancellation has been served on the Respondent and the attorney identified in prior correspondence between the parties as outside General Counsel for Respondent, by mailing said copy on December 19, 2012, via certified First Class Mail, postage prepaid, to:

Milestone Electric Inc.
4920 Grisham Road
Rowlett, Texas 75088

M. Scott Ortiz
Law Firm of Scott Ortiz, P.C.
1012 Ridge Road
Rockwall, Texas 75087



Stephen R. Lewis